



## **Staff Report**

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### DISCUSSION AND DIRECTION ON ISSUES RELATED TO PREPARATION OF NOISE ORDINANCE

Honorable Mayor and Council Members:

#### **Summary**

On January 25, 2005, the City Council approved a work plan for preparation of a new Noise Ordinance. The work plan calls for a progress report at tonight's meeting, including an opportunity for the Council to provide direction on the drafting of the ordinance. No public hearing is scheduled and no specific action is required; however, staff seeks Council comments on certain issues related to the regulation of noise.

#### **Background**

As noted in the staff report of January 25, 2005, the regulation of noise is a legitimate exercise of the City's police power to protect the health, safety and welfare of the community. The City adopted a Noise Element within the General Plan in 1982 which contains goals and policies related to noise and noise control, including a policy that states "*A noise ordinance shall be adopted*".

Staff has researched the City Municipal code for existing noise control regulations, which have been enacted over the years to addresses specific issues:

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|--|----------------------------|
| ▫ <i>Domestic Fowl or Livestock</i>  | (Section 5-28 thru -39)    |
| ▫ <i>Nuisances</i> (that is, excessive barking)  | (Section 5-40)             |
| ▫ <i>Excessive Acceleration of Motor Vehicles</i>  | (Section 14-9)             |
| ▫ <i>Hours of Operation for Construction Activity and Gasoline-Powered Maintenance Equipment</i> | (Section 15-100 thru -103) |

In addition, the Belmont Zoning Ordinance requires any activity in the C-1 zone (and by extension, all other Commercial zones) must obtain a Conditional Use Permit if they require:

*"...exterior-mounted refrigeration or mechanical equipment capable of creating noise or venting vapor or odors, within 100 feet of an area designated for residential use on the general plan."*(Section 5.2.2.f, Belmont Zoning Ordinance)

Staff has been working on crafting a more general approach to noise regulation, as discussed

below.

### **Discussion**

In accordance with the approved work plan, staff conducted a survey of nearby jurisdictions to develop a general perspective on how to regulate noise. A summary chart is attached (Exhibit A) showing the outlines of eight cities' ordinances, plus a model ordinance. (We also received comments – also attached – from individuals involved in enforcing ordinances in other cities.) In addition, staff conducted a workshop on Thursday, March 24, 2005 to take public comments on the particular noise problems people believe need attention in Belmont. Finally, staff has considered how the addition of new regulations might affect the Code Enforcement and Police Departments.

#### *Overview of Noise Ordinances*

The most significant feature of the noise ordinances reviewed by staff is whether to establish measurable noise limits and necessitate the use of a noise meter, or create a general rule prohibiting noise that is “annoying”, “offensive”, “interferes with the enjoyment of property”, or similar norm. Each has advantages and disadvantages, and both are admissible in court:

#### Measurable Limits Using Noise Meters

##### Pros:

- Consistent, predictable, easily understood (conceptually)
- Determination of violation established scientifically
- Ideally suited to long-term / continuous noise sources, such as mechanical equipment.

##### Cons:

- Requires knowledge and training in use of noise meter
- Meters must be calibrated on a regular basis to be admissible evidence
- Requires relatively quiet background noise environment
- Poorly suited to short-term / intermittent noise, such as barking dogs, garage bands, bullhorns

#### “Reasonable Listener” Standard

##### Pros:

- Allows consideration of qualities beyond volume; e.g. pitch, duration, interval (“staccato”)
- No special technical training required
- Ideally suited to intermittent noise, such as ‘boom boxes’, car alarms, parties

##### Cons:

- May appear arbitrary

In order to address this choice, a number of cities use both standards. In practice, the ‘reasonable listener’ standard is the one used most often, with the noise meter called into service when

necessary. Staff believes using both methods is the appropriate choice for Belmont and we seek Council support for this dual approach to regulation. If acceptable, a draft ordinance will be prepared including noise limits for a variety of conditions (time of day, zone, etc.)

Another area of interest is the list of exemptions to the noise ordinance. Many cities make allowance for emergency sirens and repair work, school and league sports activities, waste collection and other activities. Belmont should consider what exemptions might be allowed, and staff will forward its recommendation in the draft ordinance. Any comments or suggestions the Council may wish to offer would be useful.

Finally, most cities have a procedure for granting exceptions, with the decision made by staff (typically the City Manager, Police Chief or Planning Director.) Criteria for granting exceptions provides guidance to the applicant and decision maker, and can make provisions for special community events, occasional private parties and other one-time activities. Limits on the event duration, number of times per year, notice to neighbors are used to protect against abuse. Decision making by staff allows for a quick turn-around (compared with a hearing before the Council or Planning Commission). Staff will include a section on exceptions for Council consideration.

#### *Noise Issues in Belmont*

The comments provided at the March 24, 2005 workshop covered a number of different noise sources (transcripts attached as Exhibit B). Staff believes that the issues raised at the workshop can be grouped as follows:

- *Outdoor athletic activities at the Notre Dame campuses* – “screaming girls, bellowing coaches”, “noisy college games”, “basketball on courts at Notre Dame Elementary”, “amplified speakers”, “air horns”
- *Emergency Sirens* – “sirens at least six times per day on Ralston”, “...especially when sounded in middle of the night...”
- *Construction Activities* – “...outside of regulated hours”, “workers coming to job sites”, “radios blasted by construction workers”
- *Gardening Equipment* – “gas leaf blowers”, “power equipment on weekends”, “leaf blowers on Sundays...”, “loud leaf blowers”, “leaf blowers”, “garden equipment”
- *Animals* – “three barking dogs”, “dogs”, “intermittent barking”
- *Mechanical equipment* – “A/C mechanical equipment”, “old, loud and vibrating mechanical equipment”, “exhaust fans”
- *Vehicles* – “illegal mobile vehicles”, “motorized skateboards”, “burning rubber”, “gas delivery trucks”, “idling Safeway semi”, “go-peds”, “delivery trucks”, “cars with noisy mufflers”
- *Miscellaneous* – “continuous noise”, “rock bands practicing”, “airplanes”, “garbage pick-up”, “BFI”, “alarms”, “garage bands”, “congregating at institutions”

Staff believes that the list represents noise problems that might be found in any built out suburban community, with the Notre Dame schools providing some additional concerns about

outdoor athletics. Many of these problems are addressed by the city's special noise provisions already in place (see above) and all of them can be addressed by a new broad-based ordinance (subject to certain limits, such as constitutional protection of free speech).

The City might also consider if any noise source might be exempted to some degree because of their overriding or special importance to the community. Three examples for the Council's contemplation are outdoor school athletic programs, emergency vehicles, and trash pick-up. The importance of schools to the community may justify some additional noise related to school athletic programs. The need to provide emergency access through street traffic often requires the use of sirens. Trash pick-up in the early mornings may generate noise, but otherwise allows for efficient delivery of waste collection services. The Council can provide direction on how important these and other unique activities are to the community and what kind of attention they should be given in a noise ordinance.

*Administration of Noise Ordinance* – The adoption of a more comprehensive set of noise regulations would expand the list of residential and commercial activities subject to enforcement. Consequently, the City will experience a greater demand for enforcement service as the new ordinance becomes better known. During 2003 and 2004, the Code Enforcement Officer and Police Department responded to about 700 noise-related calls per year – a benchmark that would likely increase. Since a great deal of staff time is required to work with violators to resolve noise problems, the Code Enforcement Officer and especially the Police Department will be forced to allocate limited resources among competing demands.

If a noise ordinance is enacted under our current enforcement procedures (violators are forwarded to the City Attorney for prosecution) staff may well find itself choosing which problems will receive a response. The development of an administrative citation procedure for code enforcement could introduce a more efficient means to respond to local problems such as noise. Under Council direction, staff is preparing a draft administration process for enactment later this year. The Council may wish to consider adopting new noise regulations in coordination with a new administrative citation process

In summary, the administration and enforcement of a broader noise ordinance could be challenging. It is important to review all existing and proposed provisions to ensure they do not conflict with each other or with state and federal laws. Staff will bring forward a draft ordinance that attempts to address these issues.

### **Fiscal Impact**

None at this time. A more restrictive ordinance will likely place additional demands on staff time.

### **Public Contact**

Posting of City Council agenda and notice to attendees of 3/24/05 workshop.

**Recommendation**

It is recommended that the Council discuss and provide direction on three points raised in this report:

- Method(s) to measure noise (meters, “reasonable listener”)
- Activities to be exempted
- A process for allowing exceptions

Based on Council direction, staff will prepare a draft noise ordinance for review and adoption.

**Alternatives**

1. Cancel the project

**Attachments**

- A. Comparison of Noise Ordinances
- B. Comments from Other Agencies
- C. Workshop Comments (3/24/05)

Respectfully submitted,

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Craig A. Ewing, AICP  
Planning and Community  
Development Director

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Daniel Rich  
Interim City Manager